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Magalie Salas, Secretary
Federal Communications Commission
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Washington, D.C. 20554

RECEIVED
MAR 25 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Matter of the Pay Telephone Reclassification
and Compensation Provisions of the Telecommunications
Act of 1996, CC Docket No. 96-128

Dear Ms. Salas:

Enclosed for filing in this docket are the original and one copy of a letter I sent to Lawrence Strickling of the Common Carrier Bureau on behalf of the RBOC/GTE/SNET Coalition. I would ask that you include the letter in the record of this proceeding in compliance with 47 C.F.R. § 1.1206(a)(2).

If you have any questions concerning this matter, please contact me at (202) 326-7902.

Yours sincerely,

Michael K Kellogg
Michael K. Kellogg

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

March 25, 1999

Lawrence E. Strickling
Chief, Common Carrier Bureau
Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

Re: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128.

Dear Mr. Strickling:

I am writing on behalf of the RBOC/GTE/SNET Payphone Coalition in regard to the "Erratum" to the Third Report and Order in the Payphone proceeding, issued by the Enforcement Division of the Common Carrier Bureau on March 12, 1999 (attached hereto as Exhibit A). As noted in its letter to Glenn Reynolds of February 12, 1999 (attached hereto as Exhibit B), the Coalition is concerned that careless language in the Third Report and Order could be misread to muddy what was a clear definition of "compensable call" for purposes of the per-call compensation obligation. In particular, the Third Report and Order contained misleading or incorrect references to 0+ calls, inmate calls, and 1+ calls.

As the Coalition has noted, the definition of "compensable call" was not an issue that was on remand from the D.C. Circuit, was not an issue upon which the Commission sought comment, and was not an issue raised in any Petition for Reconsideration. The Commission therefore could not alter its prior definition of "compensable call" without committing reversible procedural error; nor does the Coalition believe that the Commission intended to alter that prior definition in any way. Indeed, the Commission's regulations on this point are straightforward and require little elaboration. Those regulations provide that, with enumerated exceptions not at issue here, "every carrier to whom a completed call from a payphone is routed shall compensate the payphone

Lawrence E. Strickling
March 25, 1999
Page 2

service provider for the call at a rate agreed upon by the parties by contract.” 47 C.F.R. § 64.1300(a). “In the absence of an agreement . . . the carrier is obligated to compensate the payphone service provider at” the per-call rate. Id. § 64.1300(c) (as amended). In other words, any completed call for which the PSP is otherwise uncompensated is eligible for per-call compensation under the Commission's rules.

The Commission has already made clear that, in the absence of a contract for compensation between a PSP and the 0+ carrier, the carrier must pay per-call compensation. This issue was addressed specifically with regard to BOC PSPs, who are denied compensation on many 0+ calls made from their payphones because, before 1996, many premises owners negotiated long-term commission contracts directly with IXC's. The Commission has therefore held that “once the BOCs reclassify their payphones and terminate all subsidies, . . . they may receive the per-call compensation established by the [First Report and Order], so long as they do not otherwise receive compensation for use of their payphones in originating 0+ calls.” First Report and Order, 11 FCC Rcd 20541, 20569, ¶ 53 (1996); see Order on Recon., 11 FCC Rcd 21233, 21259, ¶ 51 (1996).

This rule is required under the Act. The D.C. Circuit has already reversed the Commission on one occasion when the Commission failed to provide compensation for each and every 0+ call that was not subject to compensation under contract. With regard to the Commission's failure to provide compensation for otherwise uncompensated 0+ calls during the interim period, the Court held:

The Commission's failure to provide interim compensation for 0+ calls is patently inconsistent with § 276's command that fair compensation be provided for “each and every completed . . . call.” . . . On remand, the Commission must correct this flaw in the interim compensation scheme.

Illinois Pub. Telecomm. Ass'n v. FCC, 117 F.3d 555, 566 (D.C. Cir. 1997).

As noted above, the Coalition is aware that the Commission was without authority to alter the definition of “compensable call” without providing notice and opportunity for comment; moreover, if the Commission were to attempt to deprive PSPs of compensation on otherwise uncompensated 0+ calls, it would be in violation of the plain holding of the D.C. Circuit. Nonetheless, at least one IXC has already seized upon the language in the Commission's order as an excuse to try to evade its well-established compensation obligations. See Letter from Harold Salters, Amnec, Inc. to John Mahoney and Rodger McDowall, Ameritech Pay Phone Services (March 11, 1999) (attached hereto as Exhibit C). The Coalition has every reason to fear that other IXC's will do the same.

Lawrence E. Strickling
March 25, 1999
Page 3

It is for this reason that the Coalition called these statements to the Bureau's attention with ample time for the Bureau to issue Errata that would foreclose any future controversy. Although the Bureau corrected the error concerning inmate calls, it failed to address the errors concerning 0+ calls, nor did it address the misstatements of fact concerning 1+ calls.

The Bureau staff have now suggested that the Coalition file a Petition for Clarification concerning IXCs' responsibility to pay compensation on otherwise uncompensated 0+ and 1+ calls. The Coalition has no intention of doing so. The regulations are clear, and the Commission had no authority to alter them at this stage in the proceeding. If IXCs fail to live up to their responsibilities under federal law, Coalition members will take appropriate legal actions, including the filing of complaints with the Commission. If necessary, the Coalition will again seek appropriate relief in court.

I would encourage you to issue a further errata to correct the problems noted in the Third Report and Order that have not already been corrected.

If I can provide any further clarification or information, please call me at (202) 326-7902.

Yours sincerely,


Michael K. Kellogg

Attachments

cc: Dorothy Attwood
Glenn Reynolds
Alexander Starr
Mark Seifert
Craig Stroup

Federal Communications Commission

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of the)	CC Docket No. 96-128
Pay Telephone Reclassification)	
and Compensation Provisions of the)	
Telecommunications Act of 1996)	
)	

ERRATUM

By the Common Carrier Bureau, Enforcement Division:

Released: March 12, 1999

On February 4, 1999, the Commission released the *Third Report and Order* (FCC 99-7) in this proceeding. These errata correct certain errors in the released text.

1. This erratum amends paragraph 2, footnote 4 by changing "(1966)" to "(1996)".
2. This erratum amends paragraph 18, by changing "2001" to "2002" in each instance it appears in the text of paragraph 18.
3. This erratum amends paragraph 53, by deleting the parenthetical phrase "(to be specifically addressed in a separate proceeding)".
4. This erratum amends paragraph 53, footnote 92 by adding, at the end of the footnote, "*See, e.g., First Report and Order on Reconsideration*, 11 FCC Rcd at 21260, ¶ 52. We note that there is a separate proceeding before the Commission addressing the compensation amount for inmate calls in light of state rate ceilings."

FEDERAL COMMUNICATIONS COMMISSION

Glenn Reynolds
Deputy Division Chief, Enforcement Division,
Common Carrier Bureau

KELLOGG, HUBER, HANSEN, TODD & EVANS, P.L.L.C.

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February 12, 1998

Mr. Glenn Reynolds
Federal Communications Commission
2033 M Street, N.W., Suite 500
Washington, D.C. 20554

Re: Pay Telephone Reclassification and Compensation
Provisions of Telecommunications Act of 1996,
CC Docket No. 96-128

Dear Mr. Reynolds:

Thank you for meeting with me and other representatives of the RBOC/GTE/SNET Payphone Coalition yesterday. As we discussed during that meeting, the Coalition is concerned that some language in the FCC's recently released Third Report and Order ("Order") might lead to some confusion concerning the definition of "compensable call" for purposes of the per-call compensation obligation.

The Coalition notes that the definition of compensable call was not an issue that was on remand from the D.C. Circuit, was not an issue upon which the Commission sought comment, and was not an issue raised in any Petition for Reconsideration. The Commission's previously established regulations on this issue are straightforward and require little elaboration. Those regulations provide that, with enumerated exceptions not at issue here, "every carrier to whom a completed call from a payphone is routed shall compensate the payphone service provider for the call at a rate agreed upon by the parties by contract." 47 C.F.R. § 64.1300(a). "In the absence of an agreement . . . the carrier is obligated to compensate the payphone service provider at" the per-call rate. *Id.* § 64.1300(c) (as amended). In other words, any completed call for which the PSP is otherwise uncompensated is eligible for per-call compensation under the Commission's rules. Indeed, the D.C. Circuit has strongly suggested that any other result is inconsistent with the Act.

Mr. Glenn Reynolds
February 12, 1999
Page 3

. . . when BOCs do not otherwise receive compensation pursuant to contract." Order on Recon., 11 FCC Rcd at 21260, ¶ 52.

As the Coalition understands it, nothing in the remand of Inmate Calling Services Providers Coalition v. FCC, No. 97-1046 (D.C. Cir.) called for reconsideration of the eligibility of inmate calls for per-call compensation. That appeal raised two issues — fair compensation for local and intraLATA toll collect calls from inmate payphones and implementation of non-structural safeguards with respect to telephone service provided to independent inmate payphone services providers. Neither issue implicates the question of which inmate calls are eligible for per-call compensation.

1+ calls. In note 7 of the Order, the Commission states that 1+ calls are a "subset" of 0+ calls, carried by the PSP's presubscribed carrier. In the case of many BOC PSPs, this is factually incorrect. Because few IXCs have the technical capability to carry 1+ calls (which require coin control to be performed by the IXC's switch), such calls are usually routed to AT&T as the default carrier.

The arrangements for compensation between BOC PSPs and AT&T (in most cases) antedate the 1996 Act and do not provide BOC PSPs with any compensation for the use of their payphones. Under the Commission's regulations, because AT&T is the "carrier to whom a completed call from a payphone is routed" and because the parties have not agreed upon a rate for compensation, such calls are compensable at the default rate.

The Coalition believes that these inaccuracies could be resolved through the issuance of errata or a clarification.

1. First, the Commission should delete the second and third sentences of note 7 of the Order, beginning at "A related subset . . ." and ending at "through the deposit of coins." Those sentences, as described above, are inaccurate in the case of many dumb payphones. If it were considered essential to describe the nature of 1+ calls, we would suggest substituting the following language for the second and third sentences:

Another category of long distance calls made from payphones are so-called "1+" calls where the caller makes a long distance call from the payphone by dialing "1" plus the long distance number. In the case of "smart" phones, including some BOC "smart" payphones, the payphone's presubscribed carrier carries the call and the payphone owner may retain part of the payment

received from the caller, typically through the deposit of coins, as a commission. In the case of many dumb phones, however, 1+ calls are sent to AT&T as a default carrier, and the payphone provider may not receive any compensation from the caller; all coin deposits, sometimes with an adjustment for administrative charges or a fraud allowance, are paid over to AT&T.

Alternatively, the latter two sentences (which raise complexities that appear to be unnecessary for the purposes of the Order) could be omitted.

2. Paragraph 53 and note 90 should also be corrected. In the Coalition's view, the cleanest solution would be to substitute the following language for paragraph 53, deleting all accompanying footnotes:

As our rules provide, except in the case of calls for which section 276 specifically provides that PSPs are not entitled to compensation, the term "compensable call" includes all completed calls that a PSP routes to a carrier for which the PSP is not otherwise compensated. [fn. See 47 C.F.R. § 64.1300(a)-(c).] We reiterate that, for purposes of this Order, calls for which PSPs receive compensation from some other source, e.g., as part of an individual contract between a PSP and an IXC, are not entitled to per-call compensation under this Order.

Alternatively, if the Commission feels that it is desirable to list example of compensable calls, the paragraph could read as follows (modifications in bold type):

Specifically, we establish for purposes of this Order that the term "compensable call" includes:

- (1) access-code calls; [fn. 88 as is]
- (2) toll-free calls; [fn. 89 as is]
- (3) certain 0+ and 1+ calls (e.g., 0+ calls for which a BOC PSP is not otherwise compensated because of a contract between the location provider and the presubscribed IXC); [fn. 90: See First Report and Order, 11 FCC Rcd 20541, 20569, ¶ 53 (1996); Order on Recon., 11 FCC Rcd 21233, 21259, ¶ 51 (1996). A 0+ call occurs when the caller dials "0" and then the

desired telephone number. 0+ calls include credit card, collect, and third-number-billing calls. OSP Second Report and Order, 7 FCC Rcd at 3251 n.4.¹]

(4) certain 0- calls (e.g., 0- calls in states that, with FCC permission, prohibit blocking of such calls); [fn. 91 as is]

(5) certain inmate calls [**remainder deleted**]; [fn. See, e.g., Order on Recon., 11 FCC Rcd at 21260, ¶ 52. "Inmate calls" are calls made by inmates using payphones located in the prison or penitentiary.]

(6) certain toll-free Government Emergency Telecommunications System (GETS) 710 calls. [fn. 93 as is]

"Compensable calls," in the context of this Order, do not include

(1) **local** coin calls or other calls, such as **local** directory assistance calls, for which the payphone provider can otherwise charge;

(2) 0+ **and** 1+ calls for which the PSP receives compensation under contract with the presubscribed carrier;

¹The remainder of footnote 90 should be deleted because it is confusing and legally incorrect. The Commission appears to be suggesting that if a PSP has the opportunity to enter into a contract with a presubscribed carrier but chooses not to do so, the PSP has thereby waived any claim to compensation for such a call. This suggestion runs contrary to the language of the Commission's rules and the statute. Section 64.1300(c) provides the "[i]n the absence of an agreement . . . the carrier is obligated to compensate the payphone service provider at a per-call rate of \$.24." Section 276(b)(1)(A) likewise provides that payphone providers should be fairly compensated for "each and every" completed call made from their payphones.

Moreover, the language should be deleted because it invites disputes over the meaning of the word "chosen" and because it provides IXCs with an incentive to avoid entering into negotiated agreements with PSPs.

Mr. Glenn Reynolds
February 12, 1999
Page 6

(3) 0- calls in states that do not prohibit blocking of 0- calls.

We reiterate for the purposes of this Order, calls that receive compensation from some other source, e.g., as part of an individual contract between a PSP and an IXC, are not entitled to per-call compensation under this Order.

3. It may also be quite helpful to add a footnote at the beginning of the paragraph containing the following language:

. . . the term "compensable call" includes: [fn.
Nothing in this list is intended to alter carriers' per-call compensation obligations as previously set out in the Payphone Orders.]

* * * * *

We hope that the foregoing suggested clarifications are helpful. If I can provide any further information, please call me at (202) 326-7902.

Yours sincerely,


Michael K. Kellogg

cc: Lawrence Strickling
Mark Seifert
Craig Stroup



9





March 11, 1999

CERTIFIED MAIL -RETURN RECEIPT REQUESTED

Mr. John Mahoney
Director of Accounting Operations
Ameritech Pay Phone Services
225 West Randolph Street - Floor 15C
Chicago, Illinois 60515

Mr. Rodger McDowall
Gen. Mgr., Information Systems
Ameritech Pay Phone Services
225 West Randolph Street
Chicago, Illinois 60515

RE: Per Call Compensation

Dear Messrs. Mahoney and McDowall:

This follows-up on our telephone conference of last week with Mr. John Conte, AMNEX's Director of Management Information Systems, concerning per-call compensation that Ameritech claims is due from AMNEX in its role as the 0+ presubscribed carrier of payphone calls. Subsequent to the conference call, we had the opportunity to review the Federal Communications Commission's recently released Third Report and Order, and Order on Reconsideration of the Second Report and Order in the CC Docket No. 98-128 proceeding implementing the payphone provisions of the Telecommunications Act of 1996, released February 9, 1999.

We have enclosed the two pages from the Third Report that concern the definition of a compensable call. With attention to paragraph 53 of this document, we note that 0+ presubscribed calls are not subject to per call compensation. Accordingly, we do not believe that AMNEX owes per call compensation to Ameritech for presubscribed 0+ calls. By their very nature, these presubscribed 0+ calls do not constitute the dial-around traffic that the FCC's payphone compensation mechanism is designed to address.

If you have further questions, please contact me at 703-750-0072.

Sincerely,

Harold Salters
Director of Regulatory Affairs
AMNEX, Inc.

Enclosure

AMNEX, INC.

145 Huguenot Street • Suite 401 • New Rochelle, NY 10801 • (914) 235-1003 • Fax (914) 235-1339

coin calls and compensable calls. Finally, we set forth the manner in which we apply our bottom-up approach to establish a fair default compensation amount.

1. Definition of Compensable Call

51. As an initial matter, we specify the types of calls for which PSPs may receive the default per-call compensation amount that we establish in this Order. "Compensable calls" for purposes of this Order are calls from payphones for which the payphone owner cannot receive compensation from another source.

52. Section 276 specifically provides that PSPs are not entitled to compensation for 911 emergency and TRS calls.⁶⁶ Consequently, when entering the payphone business, PSPs assume the legal obligation of allowing 911 emergency and TRS calls to be made from their payphones without receiving per-call compensation.⁶⁷ The term "compensable call" applies, as does this rulemaking proceeding, to intrastate as well as interstate calls, by virtue of specific provisions of section 276(b)(1)(A).

53. Specifically, we establish for purposes of this Order that the term "compensable call" includes: (1) access-code calls;⁶⁸ (2) toll-free calls;⁶⁹ (3) certain 0+ calls (e.g., 0+ calls

⁶⁶ The TRS enables individuals with hearing or speech disabilities to communicate with individuals who do not have hearing or speech disabilities. The Public Switched Telephone Network (PSTN) processes TRS calls as toll-free, which means the receiving TRS center pays for the call, and not the TRS subscriber. When state public utility commissions introduce 711 as a replacement for the current toll-free numbers used by the TRS centers, the PSTN will be programmed to translate 711 so that the call is routed to the state's TRS center, designated by the TRS carrier to receive calls from the calling party's location. Calls placed by the TRS center to the party desired by the TRS user, however, are charged to the TRS user by the interexchange carrier selected by the TRS user. See generally 47 C.F.R. § 64.603.

⁶⁷ 47 C.F.R. § 64.1300(a), (b), (c). See 47 U.S.C. § 276(b)(1)(A) (exempting TRS and 911 calls from compensation requirement). Cf. *Telecommunications Relay Services, and the Americans with Disabilities Act of 1990*, Memorandum Opinion and Order, CC Docket No. 90-571, 1998 WL 45806 (Com. Car. Bur. 1998) (continuing suspension of enforcement of TRS coin sent-paid service requirements until August 26, 1999, and the interim plan wherein, inter alia, TRS users may make local TRS payphone calls free of charge and TRS users may make toll calls that connect the TRS center with the desired party using calling cards or debit cards at rates equivalent to or less than those that would apply to coin sent-paid calls made by non-TRS users).

⁶⁸ An "access-code call" is a call made using a sequence of numbers that, when dialed, connects the caller to the OSP associated with that sequence, rather than the OSP presubscribed to the originating line. Access-code calls include toll-free calls (e.g., 1-800-CALL-ATT, 1-800-COLLECT), 101XXXXX calls in equal access areas, and "950" Feature Group B dialing (e.g., 950-XXXX or 950-1XXXX) anywhere, where the three-digit XXX is assigned to a particular LXC. See *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, 7 FCC Rcd 3251, 3251 n.1 (1992) (*OSP Second Report and Order*).

made from a payphone where the PSP serve as an aggregator);⁹⁰ (4) certain 0- calls (e.g., 0- calls in states that, with FCC permission, prohibit blocking of such calls);⁹¹ (5) certain inmate calls⁹² (to be specifically addressed in a separate proceeding); and (6) certain toll-free Government Emergency Telecommunications Systems (GETS) 710 calls.⁹³ "Compensable calls," in the context of this Order, do not include: (1) coin calls or other calls, such as directory assistance calls, for which the payphone provider can otherwise charge; (2) presubscribed 0+ calls; and (3) 0- calls in states that do not prohibit blocking of 0- calls. We reiterate that, for purposes of this Order, calls that receive compensation from some other source, e.g., as part of an individual contract between a PSP and an IXC, are not entitled to per-call compensation under this Order.

2. Definition of Fair Compensation.

54. In relevant part, section 276(b)(1)(A) requires that PSPs be "fairly compensated for each and every completed . . . call." Neither the statute nor the legislative history makes clear, however, what Congress meant by the phrase "fairly compensated." At the same time, section 276(b)(1) directs the Commission to achieve this goal in a manner that will "promote competition among PSPs and promote the widespread deployment of payphone services to the benefit of the general public." The legislative history again provides little guidance. It would appear, however, that section 276 was enacted, in part, in recognition of the limitation on the ability of PSPs and carriers to negotiate a mutually agreeable amount as a result of TOCSIA's prohibition on barring IXC-access calls by PSPs.

55. In light of the above, we find that PSPs will be fairly compensated if, at a minimum, we: (1) balance the interest of PSPs and those parties that will ultimately pay the

⁹⁰ "Toll-free calls" consist of calls to a toll free number assigned to a particular subscriber (e.g., 1-800-FLOWERS). See *Notice*, 11 FCC Rcd 6716, 6723, ¶ 11, n.37. In this Order, the term "subscriber 800 calls" encompasses all toll-free subscriber calls, including calls to 888 and 877 numbers. See *Toll Free Service Access Codes*, 11 FCC Rcd 2496, ¶ 1 (1996).

⁹¹ A 0+ call occurs when the caller dials "0" and then the desired telephone number. 0+ calls include credit card, collect, and third-number-billing calls. *OSP Second Report and Order*, 7 FCC Rcd at 3251 n.4. If, however, a PSP has chosen not to enter into a contract for payment for 0+ calls, any 0+ calls from that payphone are not compensable.

⁹² 0- calls occur when a caller dials 0 and then waits for operator intervention. 0- calls are made possible by LECs offering to OSPs a call transfer service under which LECs transfer calls to the OSP requested by the calling party. *OSP Second Report and Order*, 7 FCC Rcd at 3255 n.44.

⁹³ "Inmate calls" are calls made by inmates using payphones located in the prison or penitentiary.

⁹⁴ GETS calls are toll-free calls that certain government employees may make in the case of a national emergency by dialing 710 plus the appropriate number.

Mr. Glenn Reynolds
February 12, 1999
Page 2

See Illinois Pub. Telecomm. Ass'n v. FCC, 117 F.3d 555, 565-66 (D.C. Cir. 1997).

The Coalition does not understand anything in the Order to call these basic principles into question. The Coalition is concerned, however, that some of the facts and terminology used by the Commission are inaccurate, and these inaccuracies might provoke disputes in the future if not clarified. These inaccuracies relate to three classes of calls: 0+, inmate, and 1+ calls.

0+ calls: In paragraph 53 of the Order, the Commission states that "0+ calls made from a payphone where the PSP serve[s] as an aggregator" are compensable, while "presubscribed 0+ calls" are not compensable. These terms are incorrect: all payphone providers are aggregators (see 47 U.S.C. § 226(a)(2)), and all 0+ calls are sent to the payphone's presubscribed carrier. Thus the distinction the Commission was attempting to draw is not clear from the language of the Order. In addition, note 90 of the Order contains confusing language concerning the type of 0+ calls for which compensation must be paid.

The Commission has already made clear that, in the absence of a contract for compensation between the PSP and 0+ carrier, the carrier must pay per-call compensation. This issue was addressed specifically with regard to BOC PSPs, who are denied compensation on many 0+ calls made from their payphones because, before 1996, many premises owners negotiated long-term commission contacts directly with IXC's. The Commission has therefore held that "once the BOCs reclassify their payphones and terminate all subsidies, . . . they may receive per-call compensation established by the [First Report and Order], so long as they do not otherwise receive compensation for use of their payphones in originating 0+ calls." First Report and Order, 11 FCC Rcd 20541, 20569, ¶ 53 (1996); see Order on Recon., 11 FCC Rcd 21233, 21259, ¶ 51 (1996).

Inmate calls: In paragraph 53 of the Order, the Commission states that "certain inmate calls (to be specifically addressed in a separate proceeding)" are compensable.

The Commission has already explained that, as with 0+ calls, in the absence of a contract for compensation, the carrier must pay per-call compensation to the PSP for inmate calls. Again, many BOC PSPs are denied such compensation now because of long-term commission arrangements that antedated the 1996 Act. The Commission has thus held that "BOCs are able to collect per-call compensation for 0+ calls originated from BOC inmate phones